IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Crl.MC.No. 8490 of 2002(C)

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ST.1441/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, KANJIRAPPALLY

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PETITIONER(S):

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C.G.SASIDHARAN, SUB INSPECTOR OF POLICE, PALLIKATHODU KOTTAYAM DISTRICT, RESIDING AT CHEMPENKULAM HOUSE, R.P.C. POST, VENDANPATHAL MUNDAKAYAM, KOTTAYAM DISTRICT.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENT(S):

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1. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

2. SRI.FELIX MARY DAS JUDICIAL FIRST CLASS MAGISTRATE -1, KANJIRAPPALLY.

ADV. SRI.K.GEORGE VARGHESE KANNANTHANAM FOR R2
PUBLIC PROSECUTOR SRI.NOBLE MATHEW.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.HEMA, J.**

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**Crl.M.C.NO.8490 OF 2002**

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**Dated this the 6th December, 2007**

**O R D E R**

Petitioner is the Sub Inspector of Police. According to him, he has been proceeded against, by the Magistrate Court for offence under Section 221 of the India Penal Code ('IPC', for short), illegally. According to him, entire proceedings adopted by the court against him are improper, incorrect and illegal. Therefore, he seeks to quash Annexures A to C, E and F orders passed by the court, by invoking powers under Section 482 of the Code of Criminal Procedure ('the Code', for short).

2. The learned Magistrate, who proceeded against the petitioner as accused in ST.1441 of 2002 was impleaded as the second respondent in this proceedings though this was not necessary or even warranted. Learned counsel for the second respondent pointed out that the learned Magistrate cannot be made a party to the proceedings in his personal capacity, since the proceedings sought to be quashed are proceedings initiated by a court in a criminal case. Hence, second respondent was directed to be deleted from the party array.

3. According to petitioner, he was on duty as Sub Inspector of Police on 31.8.2002. There was a demonstration against the hike in electricity charges and roads were blocked. Learned Magistrate came to the spot on his way to the court, and he was dropped in court in the police jeep. After learned Magistrate left, petitioner effectively removed the demonstrators who were found to obstruct the road. The crowed was disposed of by 10.45 AM.

4. It is further stated in the petition that after one or two days petitioner was called to Magistrate Court. He allegedly reported before the Magistrate in his chamber, when he was arrested by learned Magistrate on the allegation that he disobeyed the direction issued by him to arrest the demonstrators who are found to obstruct the way. He was also directed by learned Magistrate to be present in the court after lunch. When the court commenced sitting, the case was called and the particulars stated in Annexure-A under the title 'court charge' were read over to him and the court ascertained whether he was pleading guilty or not and the Magistrate passed Annexure-B order, which reads as follows:

> "Accused present. Arrested. P.O read over, pleaded not guilty. Released on self bond for Rs.10,000/-. Post on 27.9 for further steps."

5. Learned counsel for the petitioner submitted that petitioner received Annexure-C order from the court which is styled as a proceedings under Section 156(3) Cr.P.C, which reads as follows:

> "It was noticed by me at Kodungoor junction between 10 AM and 10.15 AM on 31.8.02 that certain persons were sitting in the K.K road and another person standing and addressing them, causing obstruction to the vehicles and passengers from all sides. Though you were directed on the spot to arrest and produce the person who was found standing and addressing others sitting there, you failed to comply with the order and therefore ST.1441/02 is taken against you. I am primafacie satisfied that the persons gathered in the road, obstructing the vehicles and passengers, have committed offence including unlawful assembly. You are therefore directed to investigate the matter and file report at the earliest."

6. It is also submitted that Annexure-E was also issued to the petitioner directing him to produce names and address of police constables including jeep driver and head constables who were present at the place where the demonstration was going on on 31.8.2002 within four days. Petitioner seeks to quash the entire proceedings initiated as per Annexures A to C, E and F, as illegal.

7. On hearing both sides, it is clear that according to learned Magistrate's Court, petitioner who was a police constable is prima facie guilty of willful breach and negligent in obeying the order passed by learned Magistrate, though it is his duty, as a police officer to observe or obey. As per Section 29 of the Kerala Police Act, it shall be the duty of every police officer to promptly obey and execute all orders and warrants lawfully issued to him by any competent authority, and endeavor by all lawful means to give effect to the lawful commands of his superior officers. It shall also be the duty of every police officer under Section 29 of the Police Act to prevent to the best of his ability the commission of public nuisances, preserve the peace and collect and communicate intelligence affecting or likely to affect the public peace etc.

8. According to learned Magistrate in his counter affidavit, when any offence is committed in the presence of a Magistrate, within his local jurisdiction, he may himself arrest or order any person to arrest the offender. But, in spite of the direction issued, or the order issued, the petitioner police officer failed to arrest and produce the person who was ordered to be arrested. From all

these facts, it is clear that the learned Magistrate has proceeded against the petitioner for committing breach of an order issued by him, as per law, and also for omitting to discharge the duty as a police officer.

9. Learned counsel for the petitioner argued that such act, even if it is admitted for argument sake, will not constitute an office under Section 221 IPC. Learned counsel for second respondent argued that the ingredients of offence under Section 221 IPC will squarely apply to the facts of this case. Learned Public Prosecutor pointed out that the petitioner, as a police officer, will be liable for the penalties for the negligence on his duty under Section 44(d) on the facts and circumstances of this case.

10. I am not going into the question whether under which provision of law and under what section the acts alleged against the petitioner lie. This is primarily because there is no challenge against the court taking cognizance of the offence against petitioner. There is no prayer in the petition to quash the proceedings initiated against the petitioner, for taking cognizance of the offence. Therefore, I am not going into the details whether the offence under Section 221 IPC

is made out or not. The case relating to offence under Section 221 IPC or Section 41, is a summons case. The court has to adopt the procedure for summons cases. Section 251 reveals that the court need not frame a former charge when an accused is tried for summons case. It is relevant to note that the particulars of offence were read out and the accused was asked whether he pleads guilty or not. Therefore, even though there is a mistake in the provision of law quoted in Annexure-A, the correctness of what transpired is not in dispute. If the allegations made against the petitioner are true, there is nothing wrong, improper or illegal in the court in taking cognizance of offence against the petitioner.

11. As per Section 190 of the Code, the Magistrate of the First Class may take cognizance of any offence upon his own knowledge that he has committed the offence. Therefore, the act of taking cognizance of offence against the petitioner under Section 221 cannot be said to be illegal and it does not warrant any interference, since it was not challenged.

12. However, learned counsel for the petitioner strenuously argued that entire proceedings in calling the Sub Inspector to the

chamber, arresting him and then reading over the particulars of offence regarding the plea etc. are all illegal. Certain other proceedings initiated against the petitioner are also allegedly illegal, it is argued. A prayer is made to quash Annexures C, E and F. Annexure-C is a proceedings under Section 156(3) of the Code. On a reading of the said proceedings, it is clear that it does not relate to the case against the petitioner for the alleged offence under Section 221 IPC. It relates to the offence which was allegedly committed by the demonstrators on the public road. Both arise in different context and Annexure-C which relates to totally different offence committed by different persons and those cannot be quashed.

13. Now coming to Annexure-E. It is seen that it is a direction given to petitioner to produce the names and addresses of the police constables and head constables who were present on 31.8.2002 at 10.15 AM at the alleged place of occurrence. I do not find that it deserves any interference. In Annexure-F the learned Magistrate directed the petitioner to conduct investigation under Section 202 of the Code, instead of investigation under Section 156(3) of the Code. Learned counsel for the second respondent submitted that both

Annexures C and F relate to the public demonstration.

14. On going through the records, I do not find any reason to reject the submissions made and therefore, those orders are not liable to be quashed, in these proceedings which is initiated against petitioner for committing offence under Section 221 IPC. Both Annexures C and F relate to a totally different incident which took place at different places and it has nothing to do with the proceedings initiated against petitioner under Section 221.

15. On hearing both sides, I am also satisfied that it cannot be contended that the court committed any illegality in taking cognizance of offence under Section 221 IPC against the petitioner. As already held by me, there is no challenge against taking cognizance of offence against the petitioner. The challenge is against the framing of “charge” as per Annexure-A. Though it may appear from Annexure-A that it is titled as a “court charge”, Section 221 IPC being a summons case, a formal charge need not be framed and therefore, it has to be treated as the “particulars of offence” which the court is bound to read over to the accused, as per Section 251 of the Code.

16. A reading of Sections 190, 191 and 200 would reveal that the Magistrate of First Class is competent to take cognizance of offence on the knowledge and if he takes cognizance of offence under Section 191(c), the accused shall, before any offence is taken, be informed that he is entitled to get the case enquired into or tried by another Magistrate and if the accused objects to further proceeding before the Magistrate taking cognizance the case, shall be transferred to other Magistrate as may be satisfied by the Chief Judicial Magistrate in this behalf.

17. Therefore, it is clear from Section 191 that there is no bar as such in the same Magistrate proceeding with the trial and taking evidence or conducting enquiry into the offence. The case has to be transferred, if the accused raised any objection, before the evidence is taken. Such stage has not yet come in this case, because the court has not proceeded to take evidence. An argument is raised that in all cases in which the Magistrate takes cognizance of the offence, upon his own knowledge, he is bound to transfer the case to some other court, since he is interested in the matter personally and he will be a witness to the proceedings. This contention is

raised in the light of Section 479 of the Code.

18. On a reading of Sections 190 and 191 and 479 of the Code, it may appear that there is no blanket ban under Section 191 for the court to take cognizance of the offence upon his own knowledge and to proceed with the case, unless the accused objects, before taking evidence and it is the duty of the Magistrate to inform the accused that he is entitled to have the case enquired into or tried by another Magistrate. But learned Magistrate has not informed the accused whether he requires the case to be enquired into or tried by another Magistrate.

19. Therefore, he had no occasion to raise any objection and hence no steps was taken to get the case transferred as stated in Section 191, it is submitted. Instead, the proceedings are challenged by the petitioner before this Court under Section 482 Cr.P.C. This is not a case where the court has taken cognizance of offence against petitioner upon his own knowledge, but proceedings were initiated against petitioner, for violating the order issued by the leaned Magistrate, which the petitioner was bound to obey. This fact is clearly seen from Annexure-A, the particulars of offence read out

to petitioner.

20. But, in this context it is relevant to note that learned Magistrate missed to go through certain procedure before petitioner was called upon to plead guilty or not presumably under Section 251 of the Code. For example, Sections 191 up to 204 of the Code. If a Magistrate is taking cognizance of offence, he is of opinion, there is sufficient ground for proceeding and if the case appears to be a summons case, he shall issue only summons for the attendance of an accused.

21. But in this case, the provision contained in Section 204 has not been complied with. No summons shall be issued against accused, until a list of prosecution witnesses has been filed. Section 251 applies in a case where the accused appears or brought before the Magistrate. The expression 'accused appears' or 'brought before the Magistrate', in Section 251 necessarily has reference to Section 204 where he appears in obedience of a summons or he is brought under a warrant. Therefore, the court having failed to issue summons or taken any steps as per law to bring the accused to the court, the court ought not to have proceeded under Section 251, to

record the plea. Therefore, there is an illegality in the procedure adopted in this case.

22. Annexure-B as per which plea of the accused was recorded and all procedure followed, after taking cognizance of the offence by learned Magistrate, for the offence under Section 221 of IPC are also to be quashed. However, I do not find any reason to drop the entire proceedings initiated against petitioner on the grounds raised by petitioner.

23. In the result, the following order is passed :

(i) The plea of the accused recorded under Section 251 (Annexure B) is hereby quashed.

(ii) All proceedings adopted against petitioner, after taking cognizance of offence by learned Magistrate for offence under Section 221 of Indian Penal Code are also quashed.

(iii) The case is remanded to the Magistrate Court for fresh consideration and disposal in accordance with law.

(iv) Learned Magistrate is directed to proceed in the light of the observations made in this order,

untrammelled by any of the observations made touching merits of the case.

With these observations, this petition is disposed of.

K.HEMA, JUDGE.

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